No. 77-415

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1977

JAMES E. SALYERS,

Petitioner

vs.

BOARD OF GOVERNORS OF STATE COLLEGES AND UNIVERSITIES OF ILLINOIS, GILBERT C. FITE, WOLFGANG SCHLAUCH and MARION L. ZANE,

Respondents

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT OF ILLINOIS, COLES COUNTY, CHARLESTON, ILLINOIS.

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Pro Se.

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PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT OF ILLINOIS, COLES COUNTY, CHARLESTON, ILLINOIS AND REQUEST FOR SUMMARY REVERSAL

To the Honorable Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Your Petitioner, James E. Salyers, prays that a Writ of Certiorari issue to review the Decision and Order of Circuit Court for the Fifth Judicial Circuit of Illinois, Coles County, Charleston, Illinois, entered in this proceeding on May 13, 1976.

OPINIONS BELOW

The unpublished Decision and Order of the Circuit Court is printed in Appendix A. The docket number is 74-L-16. The Order of Dismissal of the Appellate Court, Fourth Judicial District of Illinois is printed in Appendix B. The notice of the Order of the Illinois Supreme Court denying leave to appeal is printed in Appendix C. The Notice of the Order of the Illinois Supreme Court denying reconsideration of the Order Denying Leave to Appeal is printed in Appendix D.

JURISDICTION

The Decision and Order of the Circuit Court of the Fifth Judicial Circuit of Illinois was entered on May 13, 1976, allowing respondents' Motion for Summary Judgment on Counts I and II of petitioner's Second Amended Complaint. The Appellate Court for the Fourth Judicial District of Illinois dismissed petitioner's timely filed appeal on November 19, 1976, for alleged failure to comply with Illinois Supreme Court Rules 342 and 343. On March 31, 1977, the Illinois Supreme Court denied a timely Petition for Leave to Appeal. On May 18, 1977, the Illinois Supreme Court denied a timely Motion by Petitioner for Reconsideration of the Order Denying Leave to Appeal. On August 10, 1977, Mr. Justice Stevens signed an order extending the time for filing this Petition for Writ of Certiorari to and including September 15, 1977. The jursidiction of this Court is invoked under 28 U.S.C., Section 1257 (3).

QUESTIONS PRESENTED

1. Whether a nontenured assistant professor can be summarily dismissed during a contract term behind an official facade of "suspension" without prior notice and hearing and in violation of petitioner's numerous liberty and property rights

under the Fourteenth Amendment to the United States Constitution as well as the By-Laws and Governing Policies of the Board of Governors of State Colleges and Universities of Illinois which do not even provide a suspension procedure.

2. Whether a state appellate court can dismiss an appeal and thereby evade a federal constitutional issue on unsubstantial grounds of local procedure.

3. Whether "appeal procedures" after the fact violate rights guaranteed by the Fourteenth Amendment to the United States Constitution.

4. Whether petitioner's criticisms of a university policy of awarding "merit" pay for scholarship of questionable worth is a liberty interest protected by the Due Process Clause of the Fourteenth Amendment.

5. Whether facts found which are based on impeachable testimony may be the basis for denial of rights protected by the Due Process Clause of the Fourteenth Amendment.

6. Whether petitioner is entitled to tenure.

7. Whether academic tenure can be given a constitutional foundation.

CONSTITUTIONAL PROVISIONS INVOLVED.

1. Fourteenth Amendment:

"Section 1. . . .No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction equal protection of the laws."

STATUTES INVOLVED

1. Illinois Revised Statutes, 1975, Chapter 144, Section 1008:

> "The Board, with respect to colleges and universities under its jurisdiction, shall: 1. make rules, regulations and by-laws, not inconsistent with the law. . . for the good government and management of the colleges and universities and the various interests therein. . . ."

2. Article X, Sec. 6, Governing Policies of the Board of Governors of State Colleges and Universities of Illinois:

> "Each institution within the jurisdiction of the Board. . . is deemed publisher of student publications. . . . Institutional leadership is responsible for student publications in accord with the objectives of the institution. . . ."

3. Article VI, Sec. 2.1b, Governing Policies:

> "Beginning with the rank of full time instructor or a higher rank, the probationary period should not exceed seven years. . . ."

4. Article Vi, Sec. 2.1c, Governing Policies. The relevant part of this Policy is quoted in this petition at pages

5. Article VI, Sec. 2.1d, Governing Policies is quoted in full on page of this petition.

The remaining Policies are quoted in full at A 3:

6. Article VI, Sec. 2.1f.

7. Article VI, Sec. 2.2.

STATEMENT OF THE CASE.

How Federal Question is Presented. The (Appendix A hereto) Decision and Order of the Circuit Court was based entirely on the due process requirements of the United States Constitution. The Circuit Court did not construe the By-Laws and Governing Policies of the Board of Govenors of State Colleges and Universities of Illinois, but only quoted those portions of the Policies which each party claimed applicable to the proceeding. The Circuit Court's opinion rests exclusively on the federal due process issue without construction of a local state law. See also Second Amended Complaint and Brief in Opposition to defendants' Motion for Summary Judgment, March 31, 1976. The Appellate Court's summary dismissal for alleged violation of Rules 342 and 343 is an inadequate state ground, as shown in Part 1 of Reasons for Granting the Writ.

Petitioner, James E. Salyers, was an assistant professor of history at Eastern Illinois University under the terms of a contract offer and acceptance dated July 14, 1972. (Exhibit "A" to plaintiff's Second Amended Complaint). The 1972-73 academic year was the fourth year of a seven year probationary period. The By-Laws and Governing Policies of the Board of Governors (hereinafter the "Board") were a part of the contract between petitioner and the university according to paragraph 2 of the said contract. While the contract appeared to be for a term beginning September 5, 1972, and ending May 31, 1973, the respondent, Board, was obligated to renew for the subsequent year unless "notification of nonrenewal of appointment" was issued twelve months before the expiration of the appointment. (Chapter VI, Section 2.1c of the By-Laws and Governing Policies which is plaintiff's Exhibit 8 attached to the Transcript of

Proceedings at Hearing on January 28, 1975,(hereinafter "Transcript of January 28, 1975").

Respondent, University President, Gilbert C. Fite, (hereinafter referred by name), in a letter to petitioner dated March 19, 1973, stated that petitioner was "suspended from your teaching and any other duties at Eastern Illinois University as of Tuesday, March 20th". (Exhibit "B" to plaintiff's Second Amended Complaint.) The By Laws and Governing Policies of the respondent, Board, do not provide a suspension procedure. The applicable procedures of the Board's Policies are set forth in full in the (AppendixA)Decision and Order of the Circuit Court or see Article VI, Sections 2.1f and 2.2 of the Board's Policies.

Dr. Fite's letter of March 19th further stated: "The reason for this action is your unprofessional, persistent, and open attacks on your colleagues in the history department.". On each of the three days, March 15th, March 16th, and March 19th, 1973, broadsides signed by one "Delbert Funkenheimer" were circulated among faculty members in Coleman Hall on the campus. (See defendants' deposition, Exhibit 1, 2, and 3 attached to Discovery Deposition of James E. Salyers, March 12, 1975, hereinafter "Salyers Deposition"). These broadsides satirized the scholarship and actions of eight members of the history department. (Salyers Deposition, pages 43-54). According to both Dr. Fite and respondent, Chairman of the history department, Wolfgang Schlauch, (hereinafter referred to by name), the writings of "Funkenheimer" were the main cause for the "suspension" of March 19, 1973. (Transcript of Testimony of Gilbert C. Fite at Hearing on January 28, 1975, pages 29-30, hereinafter "Fite Transcript"; Evidence Deposition of Wolfgang Schlauch, August 2, 1974, page 85, hereinafter "Schlauch Deposition").

Dr. Fite, in the letter of March 19th, also ordered petitioner to vacate his office and completely separate himself from the University and

Dr. Fite further stated that he would not release petitioner's salary payments until such time as petitioner had complied with the "suspension". On March 20th, petitioner consulted an attorney and on March 21st, petitioner returned to the University and attempted to teach his classes. (Salyers Deposition, pages 75-76). According to Dr. Schlauch, petitioner was "in the process of lecturing", (Schlauch Deposition, page 32), when Dr. Schlauch, Vice President Glen Williams, and the campus security police chief and two of his officers entered petitioner's class, enjoined petitioner from meeting his classes by announcing that petitioner was "no longer employed by the University" and dispersed the students. (Schlauch Deposition, pages 30-33; Salyers Deposition, pages 70-76; defendants' Motion to Dismiss, dated June 7, 1974, page 2).

On March 23, 1973, the University newspaper, "Eastern News", published a front page account of petitioner's "suspension". (Schlauch Deposition, pages 85-88; Plaintiff's Exhibit 9, Transcript of January 28, 1975). Pursuant to Article X, Section 6, of the Board's By-Laws, the University and its "leadership" are deemed publishers of the "Eastern News". Here Dr. Fite publicly announced that petitioner was receiving "full pay" during "the period of suspension". Dr. Fite then reiterated the charge against petitioner and now added a public charge of an unspecified and potentially infinite "many other things". Petitioner is quoted as saying, "No comment.".

In a second letter to petitioner, dated March 27, 1973, Dr. Fite repeated his demand that petitioner fully separate himself from the University and reiterated that he would not release petitioner's salary payments until petitioner's withdrawal was complete. In conclusion, Dr. Fite stated: "Finally, as you know, all of the University appeal procedures are open to you as they are to every faculty member.". (Defendant's Exhibit 13, Transcript of January 28, 1975).

Petitioner refused to comply with the "suspension" and continued to come to his office every day and several evenings. Entry in the evening was gained by the use of three keys (one to the outside door, one to the history department office, and one to petitioner's personal office) which keys had been provided by the University when petitioner was first employed in 1969. On the night of April 3, 1973, petitioner, as stated by counsel for respondent in a letter to counsel for petitioner, dated July 6, 1973, was arrested and searched by campus security police in the history department office for alleged "unlawful entry", "criminal trespass", and "breaking and entering", (Exhibit I, Plaintiff's Motion for Summary Judgment, filed March 31, 1976). Petitioner's keys were seized during this search as well as part of the draft of the fourth "Funkenheimer" broadside, this time being composed under the pseudonym "Baron Biddlebaum". Petitioner was finally released for reasons of alleged "compassion". Id.; Fite Transcript, p. 40.

Respondents subsequently entered petitioner's office and transported petitioner's books, notes, and research materials to another locality. Petitioner was so informed by letter from Dr. Fite, dated May 9, 1973. (Defendants' Exhibit 15, Transcript of January 28, 1975).

Requests by petitioner's counsel seeking clarification of the procedures employed and seeking redress for the "arrest" were ignored. (Transcript of January 28, 1975, page 202; Exhibit I, Plaintiff's Motion for Summary Judgment). No statement of respondent's position was provided until over three months after the "suspension" and well after the regular academic year had ended. In the letter of July 6, 1973, (Id.), respondent's counsel declared that petitioner had been merely "suspended" on March 19, with "dismissal" not effective until June 1, even though the clear intent of Dr. Fite's letter of March 19th and his subsequent action was summary dismissal on March 19th. Declaring that respondent's position

had been stated "without equivocation" respondent's counsel now, on July 6th, expressed dismay that petitioner had not been busy pursuing his "appeal procedures" during this period of "suspension". (Id.)

Petitioner was thereby left in a procedural "limbo" [Mitchell v. W. T. Grant Co., 416 U.S. 600, 618 (1974)] while respondents conducted a summary de facto dismissal behind the official appearance of mere "suspension" (with "full pay"). Because of his very limited finances, petitioner was obliged to do virtually all of his own legal research. Because of the very broad implications of this case and because petitioner at that point, had no experience with the law, it took him about six months after the July 6th supposed clarification of the "procedures" employed provided by counsel for respondents, to bring his research to a point where lawsuits could be filed. Petitioner then charged attorneys and, on March 20, 1974, filed his original Complaint in this cause in the Circuit Court for the Fifth Judicial District of Illinois, Coles County, Charleston, Illinois.

In their Motion to Dismiss, dated June 7, 1974, page 2, and their Amended Motion to Dismiss, dated July 25, 1974, page 4, respondents changed their position again and reverted to the original posture of March 19, 1973, by stating that petitioner was "dismissed" and "no longer employed by the University" as of March 19, 1973. The same theory was put forth on August 2, 1974, when Dr. Schlauch's deposition was taken. (See Schlauch Deposition, pages 101-102, 60). Then on August 19, 1974, in respondent's Memorandum of Law (page 2), the theory was changed once more and it was again alleged that petitioner was merely "suspended" on March 19th with dismissal not effective until "the end of the term". (Id.) Counsel even alleged that petitioner "had unlimited access to the University facilities" during this period of "suspension". (Id.)

In his testimony of January 28, 1975, (page 19), Dr. Fite alleged that petitioner had, on

March 19, 1973, been "suspended from teaching duties and that's all it meant for the moment". The letter of March 19, 1973, said "teaching and any other duties" and ordered complete separation. On February 13, 1975, the theory was changed to "suspended and dismissed for cause" without any specification as to dates at all. (Answer to Second Amended Complaint, Count I, page 2).

When asked to cite his authority to "suspend", Dr. Fite recited the two procedures quoted in full in the Circuit Court's Decision and Order. Dr. Fite was then asked to define and distinguish between these two authorities and responded: "I don't have the answer to that." (Fite Transcript, page 18).

Dr. Fite listed the various "appeal procedures" which petitioner allegedly should have been seeking during the "suspension period", but admitted that it would not be proper to expect petitioner to seek due process from a committee which had "already acted". (Fite Transcript, page 38). Examination of the record reveals that all of the "appeal" agencies, up to and including Dr. Fite had all "already acted" and done so within twenty four hours. (Id., page 33; Defendant's Exhibit 8, Transcript of January 28, 1975). After the fact, respondent's counsel, by his letter of July 6, 1973, asserted that the "suspension" was the Board's "right". Dr. Schlauch first testified that there was a formal meeting of the department personnel committee which took the initial action leading to the "suspension" on March 19th, but then changed his story and testified that there was no meeting and no minutes kept. (Schlauch Deposition, pages 25-26, 61).

Dr. Fite testified that he had no personal knowledge of any "unprofessional attacks" or of the identity of "Funkenheimer", that he knew only what Dr. Schlauch told him and that he acted on Dr. Schlauch's recommendation. (Fite Transcript, pages 10, 12-14, 24, 29-32). Dr. Schlauch, on whose recommendation and on whose

knowledge of any alleged "unprofessional attacks" Dr. Fite acted, listed these attacks as being the "Funkenheimer letters" plus four earlier memos, one of which was sent to Dr. Fite, one to Dr. Schlauch, and two to department committees. (Schlauch Deposition, pages 21-22, 63-67). Dr. Schlauch then concedes that none of the pre-"Funkenheimer" memos fit his definition of "unprofessional". (Id., pages 62-80). Concerning the "Funkenheimer letters", Dr. Schlauch was then asked if he was correctly quoted in the "Eastern News" story on March 23, 1973, and the following result was had; (Id., page 87):

> MR. MOREL:
>
> I will stipulate that Dr. Schlauch has been quoted fairly, that he does not wish to retract any of the comments that appear in here as quotes that are attributable to him.
>
> MR. KUBICEK:
>
> Q Now, Dr. Schlauch, in that article, the top of the third column is a statement that is attributable to you that says, "Schlauch says Salyers' dismissal was not brought about because of the "Funkenheimer" letters."...

Defendants filed a Motion for Summary Judgment on Counts I and II on March 22, 1976. Plaintiff filed a Motion for Summary Judgment on Count I on March 31, 1976. The Circuit Court issued its Decision and Order as to Motions for Summary Judgment on Counts I and II of Second Amended Complaint on May 13, 1976, allowing Defendants' Motion for Summary Judgment and holding that prior hearing was not mandated by the due process requirements of the United States Constitution. Appendix A hereto. Petitioner filed a timely Notice of Appeal in the Illinois Supreme Court on June 9, 1976. On August 10, 1976, the Clerk of the Illinois Supreme Court transferred the appeal to the Fourth District Appellate Court. On November 19, 1976, the Appellate Court dismissed

the appeal for an alleged failure to comply with Illinois Supreme Court Rules 342 and 343. See Appendix B hereto. On January 13, 1977, Petitioner filed a timely Petition for Leave to Appeal in the Illinois Supreme Court. On March 31, 1977, Leave to Appeal was denied by the Illinois Supreme Court. See Appendix C hereto. On May 18, 1977, Illinois Supreme Court denied a timely Motion by Petitioner for Reconsideration of the Order Denying Leave to Appeal which had been filed on April 14, 1977. See Appendix D hereto.

REASONS FOR GRANTING THE WRIT

1. THERE IS NO ADEQUATE STATE GROUND PREVENTING REVIEW BY THIS COURT OF THE FEDERAL CONSTITUTIONAL ISSUES PRESENTED.

The Decision and Order of the Circuit Court is based exclusively on the issue of due process requirements of the United States Constitution without construction of any local state law. The Appellate Court summarily dismissed for an alleged failure to comply with Illinois Supreme Court Rules 342 and 343. A state court may not evade a federal constitutional issue on unsubstantial grounds of local procedure. Broad River Co. v. South Carolina, 281 U. S. 534, 540-41 (1929); Ellis v. Dixon, 349 U. S. 458, 468 (1954). The summary dismissal of petitioner's appeal is contrary to applicable decisions of the Illinois Supreme Court and Appellate Courts governing the application of these rules and cannot stand as a bar to the vindication of petitioner's federal rights. Barr v. City of Columbia, 378 U. S. 146, 149 (1963); Henry v. Mississippi, 379 U. S. 443, 449 (1965).

The Appellate Court's summary dismissal was based on allowance of appellee's Objections and Motion to Dismiss dated October 8, 1976. Said Motion alleges that appellee did not receive a copy of appellant's Motion to Extend Time to File Brief. Said Motion was mailed with proof of service on August 17, 1976, but not received by

appellee. Such a motion is covered by Rule 343(c). In Bernier v. Schaefer, 11 Ill. 2d 525, 529 (1957), the Illinois Supreme Court held that the allegation that a motion was not received is not grounds for dismissal of an appeal because such would amount to holding a party accountable for the mail service, especially where there is no showing by appellee that he was prejudiced thereby. Bernier noted that it was "not denied that petitioner sent such a notice", and respondent in instant case made no such allegation. Id. Even an allegation that a motion was not sent was earlier held not grounds for dismissal. People v. Chapman, 392 Ill. 168, 170 (1945).

In Kimbrough v. Sullivan, 131 Ill. App. 2d 313 (1971), the Court noted "the possibilities for loss in the mails". Both Bernier and Kimbrough held that the proofs of service on file were faulty whereas those filed in the instant case meet Bernier's requirements perfectly. Even so Bernier refused to allow dismissal and Kimbrough concluded that such failure was not "sufficient in itself to control our decision". In Hambley v. Conroy, 11 Ill. App. 2d 568, 569 (1956), the court held that extensions of time to file are always justified where some external force over which appellant has no control cause a delay.

Whether a state procedural rule is jurisdictional is a factor in determining if such a rule constitutes an adequate state ground. N.A.A.C.P. v. Alabama, 377 U. S. 288, 298 (1964); Parrott v. City of Tallahassee, 381 U. S. 129 (1965). The Illinois Supreme Court has recently held that the only jurisdictional requirement in civil cases is the timely filing of a notice of appeal. Echols v. Olsen, 63 Ill. 2d 270, 347 NE 2d 720, 721-22 (1976). The Court refused to allow a motion to dismiss for an alleged failure to serve a notice of appeal on appellees, holding that service was not jurisdictional even though Rule 303(d) specifically requires service of notice of appeal on appellees, while Rule 343

specifies no service requirement at all. Echols also noted no showing of prejudice to appellees and that appellees were fully aware of appellant's essential position on the merits of the case. Such should apply to the instant case given the Circuit Court's nine-page Decision and Order which was based on Motions for Summary Judgment filed by both parties. See also Michels v. Industrial Commission, 45 Ill. 2d 111 (1970).

Concerning Rule 342, the Illinois Supreme Court, in denying a motion to dismiss held this rule not jurisdictional. City of Chicago v. Joyce, 38 Ill. 2d 368 (1967). Rule 342 (b) states that the abstract is not due until after briefs have been filed. Rule 342(i) states that filing of an abstract may be excused. Appellant filed a Motion to Excuse Excerpts or Abstract of Record on October 27, 1976. Illinois Courts have held that no abstract is required where the record is short and where the brief can incorporate all that is necessary for determination of the case. First National Bank in DeKalb v. City of Aurora, 41 Ill. App. 3d 326, 353 NE 2d 309, 312 (1976); Home Guardian of America v. Holt, 108 Ill. App. 578 (1902); Allensworth v. First Galesburg National Bank and Trust Co., 15 Ill. App. 2d 49 (1956). In its Objections and Motion to Dismiss, appellee stated that "the record in the instant case is extremely limited."

In Stauffer v. Held, 16 Ill. App. 3d 750, 306 NE 2d, 877, 878 (1974), the same Fourth District Appellate Court which summarily dismissed in the instant case, denied a motion to dismiss by appellee and affirmed judgment for appellee where appellant failed a jurisdictional notice of appeal in time. "Appellate Courts prefer to decide cases on their merits and seek to avoid determinations based on procedural rules violations or ommissions." Grounds for dismissal are "flagrant and continued infringements of procedures." Id.

In cases where the jurisdictional requirement of filing notice of appeal has been met but subsequent filing deadlines were most flagrantly abused, Illinois courts have still been most reluctant to dismiss the appeal. In People v. Thornhill, 31 Ill. App. 3d 779, 333 NE 2d 8, 16 (1975), appellant took twenty-eight months to file brief and abstract and the only excuse given was counsel's heavy schedule. The Court stated it was serving notice on the bar that such excuse "may not be sufficient grounds" in the future. The appeal was not dismissed even though the court cited as authority Gray v. Gray, 6 Ill. App. 2d 571, 578 (1955), where the Court had put the bar on the same notice twenty years earlier. No such notice has been served concerning mail service and the "grounds" provided by Bernier and Kimbrough seem quite substantial.

Appellant's Motion for Extension of Time to File was based on a Motion to Transfer to the Illinois Supreme Court. The appeal was originally filed in the Illinois Supreme Court because appellant wanted that Court to hear his appeal on the issue of federal constitutional due process, but was transferred by the clerk, by letter of August 10, 1976, to the Appellate Court, pursuant to a general order of the Supreme Court of November 15, 1971, which directs the clerk to transfer "any appeal" filed after July 1, 1971. The Historical and Practice Notes on Revised Rule 302 and the supplement thereto state that the Supreme Court should be the forum for questions of constitutional significance and public importance and that the new rule envisions that these questions be raised by a motion to transfer made in the Appellate Court. The rule requires a different structure for the brief in the Supreme Court and suggests a different emphasis. For this reason appellant requested an extension until it was determined which court would hear the appeal and because of the tremendous amount of related research.

Illinois Courts have consistently refused to dismiss an appeal where such would result in injustice, especially where appellant's liberty or property rights are at stake and appellant is "prima facie entitled to relief on the merits." Bernard Brothers, Inc. v. Deibler, 344 Ill. App. 222, 229 (1951). In Department of Public Works and Buildings v. Bartz, 6 Ill. App. 3d 160 (1972), the State was deprived of property rights amounting to $1,900 and the Court held it "too harsh a penalty" to dismiss despite violations of Rules 342 and 343. An individual's career is obviously more important than $1,900. Petitioner here contends that he did not violate these Rules in the first place.

Appeals will not be dismissed where an issue of public interest or importance is presented by the case. Masure v. Masure, 171 Ill. App. 438 (1912). In Marty v. Brown, 34 Ill. App. 3d 660, 338 NE 2d 920, 924-5 (1975), county officials sought to recover certain tax revenues. The Circuit Court ruled in favor of the officials and those taxed appealed. The Appellate Court refused to dismiss for violation of Rule 342 because the officials had acted without notice or hearing and in violations of a state stature. The Court noted "the importance" that officials abide by statutory rules.

In People v. Barker, 59 Ill. 3d 201 (1974), the Illinois Supreme Court reversed the summary disposition of a case by the Fourth District Appellate Court stating that the Appellate Court had no authority to summarily dispose of an appeal prior to the filing of briefs. The instant case is most unique in that even cases wherein the Appellant did not "take any action" and did not even appear, the Appellate Court published an opinion stating the specific deficiencies in Appellant's appeal, none of which was done in the instant case. For a very recent example, see Smith v. Lemont Fire Protection District, 3 Ill. Dec. 684 (1977). See especially analysis

of People v. Barker, in S.H.A. Ill. Stats. Ch. 110 A, Section 361, Part 1, p. 244.

Rule 301 states that every final judgment of a Circuit Court is appealable "as of right." Petitioner has been denied this "right" to even one hearing on appeal of vital federal issues by the summary dismissal on grounds which are contrary to applicable decisions of Illinois Courts. This denial of a hearing is especially unjust if, in fact, the Circuit Court's Decision and Order is in either conflict or direct conflict with decisions of this court on every issue considered.

This Court has held that a state court cannot evade a federal constitutional issue by a "simple recitation" that some state procedural rule has not been complied with and with "no indication" of how the appellant failed to comply. N.A.A.C.P. v. Alabama, supra, at 294, 297. A state procedural rule cannot be used to evade a federal issue if it has not been "strictly or regularly followed." Barr, supra at 149. A state court must be "reasonably consistent" and explain why it has accorded different treatment to the instant case. Sullivan v. Little Hunting Park, 396 U. S. 229, 244 (1969). Harlan, J., Burger, C. J., and White, J., dissenting. This dissent shows that petitioner can easily meet the requirements of the dissenters who wish to apply strictly the state grounds rule. Even if a state rule is not "novel" its application must not be so where petitioner has relied on prior decisions of the state court. Id., at 245-7.

A state rule must also serve "a legitimate state interest" but such interest requires that the application of such rules has been "clearly announced" and based on "settled principles" Henry; supra, at 447-9. One such interest is prompt disposition of cases but such interest cannot apply here given Bernier, Thornhill, Echols, Michels, Stauffer, and Smith. Further, such state interest requires deliberate evasion of a rule by a party and tere must not have been substantial compliance. Henry, supra at 448-450. Petitioner even meets the requirements of the dissenters in

Henry as in Sullivan.

Finally, appellee experienced some difficulty with the mail service. The affidavit of counsel for appellee states that he served copies of his Objections to Petitioner's Additional Authorities on February 28, 1977. Said service was supposedly by certified mail, return receipt requested, with postage fully prepaid. In fact, said Objections were not received nor properly mailed until March 21, 1977, twenty-one days after appellees' counsel stated by affidavit they were served, yet appellee suffered no penalty.

Further authorities are contained in petitioner's Petition for Leave to Appeal filed in the Illinois Supreme Court as well as petitioner's Additional Authorities filed March 3, 1977. Petitioner has meticulously researched the application of Rules 342 and 343 and their precursors back to the 1840's and can provide immediately a brief on this point is desired.

2. THE DECISION AND ORDER OF THE CIRCUIT COURT IS IN DIRECT CONFLICT WITH APPLICABLE DECISIONS OF THIS COURT.

The Circuit Court held that respondents could "suspend" petitioner and that no prior hearing was mandated by due process. The Circuit Court first noted that petitioner did not have tenure (at A 1) but any presumption that such status reduced petitioner's right to due process protections or that such status is even relevant is in direct conflict with Board of Regents v. Roth, 408 U.S. 564, 577-8 (1972), and Connell v. Higginbotham, 403 U. S. 207 (1971), wherein this court held that even an untenured mere temporary, substitute teacher could not be summarily dismissed. Further, the Circuit Court held that petitioner was dismissed for cause (Fite Transcript, p. 37). The dismissal for cause procedure of the Board's Policies is quoted in full on pages A 3 - A 4 of the Circuit Court's opinion and it prescribes identical due process procedures for both a "tenure appointment"

and a "term (nontenure) appointment" dismissed during a contract period. That petitioner had protected property interests is clear.

The Circuit Court, citing Mitchell (at 1908) as authority, proceeded to balance the respective property interests of both parties and concluded that "Order is always a problem" and that petitioner was "disrupt (ing) the main function of the institution" by "possibly attacking the . . . reputation . . . of other instructors" in his department and that given this "truly unusual" situation (Fuentes at 90, A 6, this Petition), such tips the blance in favor of respondents and against any requirment of prior due process. Such a conclusion is in direct conflict with Fuentes v. Shevin, 407 U. S. 67, 91 (1972), wherein this Court held that even in "truly unusual" situations, deprivation of property without prior hearing must be done pursuant to some "narrowly drawn statute" and the Board's non-existent "suspension" procedure does not qualify. Fuentes (at 92) listed the situations where prior due process may not be required and they are emergencies of considerable magnitude. Roth (at 570) applied basically the same criteria to academia and cited most of the same authorities. The Circuit Court's presumption that the instant case fits this "truly unusual" standard conflicts with Fuentes and Roth, especially since the stated cause of "unprofessional attacks" is impeached by respondents own testimony. (This Petition, supra, pages 10-11).

In Mitchell (at 614) this Court emphasized the importance of an individual's wages as a property interest which especially requires prior due process. In North Georgia Finishing, Inc., v. Di-Chem, Inc., 419 U. S. 601, 608 (1975), this Court indicated that an individual "might be irreparably damaged" by even a "temporary deprivation" because an individual does not possess "equal bargainning power" with a corporation or an agency. The Court concluded, however, that it was not inclined to "distinquish among different

kinds of property in applying the Due Process Clause." In his dissent, Justice Blackmun stressed the importance of prior due process in "situations involving contracts of adhesion or basic unfairness, imbalance, or inequality."

The Circuit Court (at A 2) stated that the "suspension" was with pay when the record, as shown above, does not support this conclusion. The money was only released after demands by petitioner's attorney. (See Fite Transcript, pages 39-40.) "Fourteenth Amendment draws no bright lines around three-day, ten-day, or 50 day deprivations of property." Fuentes (at 86) quoted approvingly in North Georgia (at 606).

In line with Roth and Connell the Circuit Court conceded that the right to teach after March 19, 1973 "would involve a property right" as would the right to a contract for the next year (A 6, A 2). Since the Circuit Court stated that petitioner was dismissed for cause (Fite Transcript, p. 37) petitioner was also entitled to the protections afforded by the dismissal for cause procedure (quoted at A 3). Roth (at 577) stated that property rights do depend on such policies but the Circuit Court merely quoted them and said nothing about them at all when it is prima facie obvious that respondents did not even remotely approach compliance with their own policies and Dr. Fite could not define or distinguish between them. (This Petition, p. 10).

The liberty interests presented by this case are the most numerous and far-reaching of any academic case to date and, again, direct conflicts between the Circuit Court's Decision and Order and decisions of this Court are apparent. The Circuit Court (page A 8) concluded that despite the stigma of "unprofessional" conduct, petitioner's reputation "would probably be affected as much by a pre-suspension hearing as a post suspension hearing" because "the mere filing of the complaint would cause injury" and, hence, no prior due process was required. In Bishop v. Wood, No. 74-1303 (Slip Opinion, 1976),

this Court held that no prior hearing was required because the stigma was made public only by the filing of a lawsuit. The instant case provides a vital sequel to Bishop because the charges were made public by the University.

Indeed, the instant case provides the ultimate sequel to Bishop because the University, (pursuant to Article X, Section 6 of the Board's By-Laws, supra, p. 7) used its own media. This is not a situation, as contemplated in Bishop or as envisioned by the Circuit Court, where the media would be "reporting the news" and, as a consequence, the "stigma" would become public but where a publicly supported university was using a publicly supported media to justify its illegal actions behind a facade of official propriety and to that end to also launch a malicious public attack on petitioner by means of an open-ended stigma of "many other things." In the wake of Bishop, the instant case presents test of an issue of great public importance given the tremendous growth of the size, power, and influence of the public sector with a consequent great potential for abuse of the political and constitutional rights of individuals.

The Circuit Court admits that the charges in Dr. Fite's letter of March 19, 1973 "might" involve a liberty interest pursuant to Roth, at 573, but ignores the much vaster malice presented by the total record. By so doing, the Circuit Court is clearly in conflict with the spirit of Bishop. Bishop places a rather strict interpretation on the "stigma" as an interference with liberty but if the concept of the "stigma" has any applicability, the instant case provides the strongest possible test to date.

The Circuit Court's conclusion that petitioner was "disrupt(ing)" the University seems to conflict with the intent of Withrow v. Larkin, 421 U. S. 35,37 (1975), where statutes existed which "define and forbid various acts of professional misconduct." The Board's Policies contain no definitions at all of what constitutes "unprofessional" conduct.

The Circuit Court (at A 5) cited Perry v. Sindermann, 408 U. S. 593, 925 Ct. 2694 (1972), and noted that a professor could not be discharged for protected criticisims because such would violate due process. Since petitioner's criticisims were "disrupt(ive)", in the Circuit Court's view, they were held not protected by prior due process. In Roth (at 574-75) the professor sought to raise the issue of his criticisim of the administration but this Court refused to consider the issue because it had not been dealt with by the lower court and because Roth had failed to show that his criticisims were the cause of his discharge. In the instant case, the Circuit Court has determined this issue and respondents have admitted that it was cause. The Circuit Court is, therefore, again in direct conflict with Roth (at 575) wherein this Court noted that in "a background of controversy and unwelcome . . . opinion" where the state "would directly impinge" as a result of criticisim, prior hearing is required.

The instant case also presents two related liberty interests envisioned by Roth (at 575) which are vital in an academic setting. Roth could not show any "injunctions against meetings" or "seizure of books" but petitioner can because he was enjoined from teaching his classes and his books, notes, and files were seized. The Circuit Court is again in direct conflict with Roth when, given the facts of this case, it concludes that prior due process was not required. Indeed, the Circuit Court concludes that petitioner was "disrupt(ing) the main function of the institution" (at A 8) when, in fact, it was respondents who were doing this. Petitioner was under the impression that teaching students was supposed to be the "main function of the institution" and petitioner was, according to Dr. Schlauch himself - Schlauch Deposition, p. 32) "in the process of lecturing" when his classes were disrupted by respondents. If petitioner had been bent on disruption he would

not have been "lecturing" but would have been haranging the students which was a primary pastime of many professors in the years prior to petitioner's "suspension." (Salyers Deposition, p. 92-3) Petitioner would also have used the "Eastern News" but petitioner is quoted as saying, "No comment." Respondents, however, acted with radically less restraint on March 23, 1973.

Concerning the University "appeal procedures", the Circuit Court's conclusion (at A 7) that petitioner was obligated to participate in "a review" before respondents is in direct conflict with Withrow (at 47) wherein this court held that "the probability of actual bias" against petitioner would be "too high to be constitutionally tolerable" where respondent has "been the target of personal abuse or criticisim from the party before him." The Circuit Court concludes (at A 9) that the lack of a prior hearing "is not a denial of due process because a subsequent review could give an adequate judicial dtermination of liability." Such conclusion is in direct conflict with Mitchell (supra, 94 S. Ct. at 1902) wherein this Court held that such a conclusion applied only where property interests alone were at issue and not where both liberty and property issues were present as in the instant case. Petitioner contends that a truly "adequate judicial determination" could only be made by this Court and never by respondents. Given the record in this case, the Circuit Court's conclusion that an after the fact hearing could provide an "adequate judicial determination" is in direct conflict with Withrow (at 58):

> Clearly, if the initial view of the facts based on the evidence derived from nonadversarial processes as a practical or legal matter foreclosed fair and effective consideration at a subsequent adversary hearing leading to ultimate decision, a substantial due process question would be raised. Emphasis added.

Roth (at 571-2) held that established property interests extend "well beyond . . . money." Petitioner's right to both back salary and the teaching position seems clear.

3. THE WRIT SHOULD BE GRANTED IN ORDER TO PROVIDE A CONSTITUTIONAL FRAMEWORK FOR ACADEMIC TENURE.

This Court, under Section 1257, will only consider issues "specially set up or claimed" in the state court. It may be argued that petitioner did not formally present this issue in the Circuit Court though it was discussed by both counsel. (See Salyers Deposition, p. 95; Transcript of January 28, 1975, p. 143). Petitioner contends that tenure is not a separate issue as will be shown below. However, even if it is held to be a separate issue, petitioner can still meet the requirements of Section 1257. In Food Employees v. Logan Plaza, 391 U.S. 308, 334 (1967, Harlan, J., dissenting) it was noted that in order to determine whether an issue was "specially set up or claimed" it is "sufficient to ask whether the petitioners satisfied the state rules governing presentation of issues." It was noted that the Pennsylvania Supreme Court "has consistently held" that it would never consider issues not raised in the Circuit Court and, hence, such issues would not be considered by the Supreme Court of the United States. Id. However, the Illinois practice does allow, in certain situations, presentation on appeal of

issues not raised in the Circuit Court and thus the tenure issue may be "set up or claimed" pursuant to Section 1257, if required, and be considered by this Court.

In People, ex. rel. Wilcox v. Equity Funding Life Insurance Co., 61 Ill. 2d 303, 335 NE 2d 448,454 (1975), the Illinois Supreme Court set down the criteria whereby an issue not presented below may be raised for the first time on appeal. The issue must be one of public importance, the record must contain the "factual matters" necessary to determine the question, and both parties must have had an opportunity to brief the issue. In Taylor v. County of St. Clair, 57 Ill. 2d 367, 312 NE 2d 231, 235 (1974), the Illinois Supreme Court indicated that the briefing of the issue was to be done in "this appeal" i.e. in the Illinois Supreme Court. Petitioner meets the first two criteria and was prevented from doing the third on inadequate state grounds so that both parties could brief the issue before this Court. The "factual matters" are as follows. Dr. Schlauch testified that there were two reasons for petitioner's "suspension." One was "unprofessional attacks" (the charge in Dr. Fite's letter of March 19, 1973) and the other was petitioner's alleged failure to complete his Ph.D. degree which was not stated as cause on March 19, 1973, but was raised after the fact on August 2, 1974, when Dr. Schlauch's deposition was taken. (See Schlauch Deposition, pp. 36, 50-51). Examination of the record reveals that both reasons are impeached by the testimony of respondents and the second reason is also contrary to Board Policy and the 'common law' practice of the history department.

Schlauch testified that when in November, 1971, the progress to tenure vote was taken for the upcoming 1972-73 academic year, petitioner's tenured colleagues voted overwhelmingly (12 to 2) that petitioner was progressing satisfactorily to tenure. (Schlauch Deposition, pp. 43-4). Five months later, on April 29,

1972, petitioner wrote a letter to Dr. Fite. (Plaintiff's Exhibit 3, Transcript of January 28, 1975). This letter criticized the "merit" policy whereby certain people were rewarded for their publications. Petitioner contended that such a policy resulted in people publishing almost anything (usually in very minor journals where virtually anyone could publish) simply for more pay. Petitioner attached a copy of an evaluation of a first draft of some of his work by R. K. Webb, editor of the American Historical Review (Id.). This evaluation showed that petitioner's first draft work had narrowly missed acceptance by the leading journal in the country. Petitioner suggested to Dr. Fite that no one should receive "merit" until he had published in the top journal or, in the alternative, each of the department members should secure an evaluation of his work by the top journal and then "merit" should be allocated on the basis of the relative strengths of comparative evaluations. This was the first "unprofessional attack" according to Dr. Schlauch (Schlauch Deposition, pp. 67-70) even though Dr. Fite testified that he was not offended by the letter at all (Fite Transcript. p. 6).

Schlauch then listed three subsequent memos dated May 9, 1972; May 16, 1972; and January 26, 1973; plus the "Funkenheimer" letters of March 15, 16, 19, 1973, constituting the "unprofessional attacks" but then admitted that none of the pre-"Funkenheimer" memos fit his definition of what is "unprofessional" and that he was correctly quoted in the "Eastern News" on March 23, 1973, when he stated that "Funkenheimer" had nothing to do with it. (See Schlauch Deposition, pp. 21-22, 62-80, 87-8). Shortly after the fourth and final pre-"Funkenheimer" memo, petitioner's tenured colleagues voted on progress to tenure and the vote changed from overwhelmingly favorable for the preceding year to unfavorable with a recommendation of a terminal contract on January 30, 1973, (Id., pp. 15, 43-4). On January 31, 1973,

the department personnel committee recommended "consideration of an immediate suspension." (Defendant's Exhibit 7, Transcript of January 28, 1975). Petitioner was never officially informed of this action (Salyers Deposition, p. 54) and since there is no "suspension" procedure in the Board's Policies, petitioner regarded this action as both illegal and surreptitious. Petitioner then resorted to the pseudonym "Funkenheimer" and the first broadside appeared on March 15, 1973, (Salyers Deposition, p. 43; Transcript of January 28, 1975, p. 213). On the same day, the department personnel committee recommended that petitioner be "immediately dismissed" (Defendants' Exhibit 8, Transcript of January 28, 1975). Dr. Schlauch first testified that there was a formal meeting on March 15, but then changed his story and stated that there was no meeting and no minutes kept. (Schlauch Deposition, pp. 25-26, 61). Two more "Funkenheimer" letters appeared on March 16 and 19 respectively, the last appearing the day petitioner received the letter of "suspension" from Dr. Fite. A fourth broadside, signed by "Biddlebaum", was being composed when petitioner was arrested. It was seized and, hence, never circulated. Dr. Fite testified that he had no personal knowledge of any "unprofessional attacks" but knew only what "several members of the history department, including the chairman (Dr. Schlauch)" told him and he acted on Dr. Schlauch's recommendation (Fite Transcript, pp. 29-32, 10, 12-14, 24; Schlauch Deposition, 78-9).

The other reason stated by Dr. Schlauch concerned petitioner's Ph.D., but this reason is also impeached by respondents' testimony. This reason is the only issue raised by respondents in connection with a possible denial of tenure. Dr. Schlauch first testified that he informed petitioner "of the possibility of his not getting tenure should he not receive his Ph.D. degree"(Id.,p.14) by September, 1972. Emphasis added. Petitioner had begun criticizing the "merit" policy on April 29, 1972, after having received a very

favorable progress to tenure vote in November, 1971. Respondents then started contriving this issue. On page 19, Dr. Schlauch states: "Mr. Salyers was informed prior to December, 1972, that he had to complete his degree in order to receive tenure." Emphasis added. Hence, the Ph.D. as a requirement for tenure changed from a mere "possibility" in September, 1972, to a mandatory condition three months later with the terminal contract and "suspension" recommendations the following month. On page 12 of his deposition, Dr. Schlauch conceded that there were no written conditions or rules which require a Ph.D. for tenure. Further, published policies of the Board specifically do not require a Ph.D. for tenure and they are detailed in petitioner's deposition (at pp. 17-22). University publications subsequent to petitioner's "suspension" and which were not available to him, but which could be made available or introduced in subsequent discovery, have also clearly stated that a Ph.D. is not a requirement for tenure. Such requirement for tenure was never applied to other history department members and three of the present members were granted tenure without a Ph.D. (Salyers Deposition, pp. 94-95; Transcript of January 28, 1975, p. 154). This reason is contrary to policy and the 'common law' practice of the history department and was contrived as a coverup for the real reason which was petitioner's criticisim of "merit." Nevertheless, it is the only issue raised by respondents in connection with a possible denial of tenure.

These then are the two reasons stated by respondents and they cannot stand. (See also Transcript of January 28, 1975, wherein respondents' counsel indicates only these two causes, pp. 141-54) Significantly, Dr. Schlauch listed the same two reasons - "unprofessional attacks" and the Ph.D. issue - for both the January 30, 1973, terminal contract recommendation (Schlauch Deposition, pp. 50-51) and the "suspension" recommendation of March 15, 1973 (Id., p. 36). Respondents have contended that petitioner would have

received a terminal contract anyway, pursuant to the January 30, 1973, recommendation, and that "Funkenheimer" precipitated the "suspension." (Defendants' Motion to Strike, filed April 12, 1976.) The action of January 30, 1973, was only a recommendation and it is the action of March 19 that counts. In April, 1976, respondents' counsel was changing his story again. On August 2, 1974, he stated that an action at the department level "is a recommendation, counsel, it has no effect whatsoever, only as a recommendation." (Schlauch Deposition, p. 94.)

Schlauch has stated the same reasons for both actions. Respondents could no more issue a terminal contract for such reasons than they could "suspend" for them. In Perry, supra, (at 2700) a professor without tenure was merely nonrenewed and this Court held that he could have an entitlement to continued employment pursuant to "rules and understandings" the "surrounding circumstances", and "the usage of the past" within the institution. This should dispose of the Ph.D. issue. If petitioner's criticisims ("unprofessional attacks") were a liberty interest protected by due process, pursuant to Perry, he could no more be nonrenewed than he could be "suspended." The Circuit Court concluded that petitioner's criticisims were not protected (at A 5, A 8-A 9) but petitioner contends that his criticisims were quite justified in the light of the "surrounding circumstances."

This Court has considered factual findings and evidentiary support for conclusions of courts below. American Federation of Musicians v. Carroll, 391 U.S. 99; Jacobellis v. Ohio, 378 U. S. 184, 189. The factual basis for the charge "unprofessional attacks" is impeached by respondents' own testimony and a charge based on such testimony may be unconstitutional under the Due Process Clause of the Fourteenth Amendment. Id.; Garner v. Louisiana, 368 U.S. 157, 163; Thompson v. City of Louisville, 362 U.S. 199. In the instant case, the charge is the basis or 'cause' for which

petitioner has been deprived of liberty and property rights and it should not stand. This should dispose of both charges. Given the unique "surrounding circumstances", petitioner could no more be nonrenewed on the basis of these two charges than he could be suspended, "absent 'sufficient cause'", and the two causes rest on impeachable testimony. Significantly, Dr. Schlauch stated that petitioner's teaching abilities were not in question and had nothing to do with petitioner's "suspension" (Schlauch Deposition, p. 83). These are the "factual matters"required by Illinois practice and applicable under Section 1257.

However, in accordance with the probationary period established by the Board's Policies, the tenure issue was never a separate issue; it was just not ripe for consideration at the time this litigation began. In Ortwein v. Mackey, 358 F. Supp. 705 (M.D. Fla., 1973) a professor was hired for a fixed probationary period which was to expire June 14, 1973. In 1970, he received twelve months notice of nonrenewal in strict accordance with University rules. However, a "stigma" of "lack of performance" was attached though not made public. Id., at 715. No hearing was concluded and the Court enjoined the University from discharging the professor until a hearing was held, and the University appealed that point. Litigation lasted until April 6, 1973. The University argued that it should not have to reinstate and give tenure since proper notice had been given back in 1970. Id., at 716. Nonetheless, the Court reinstated the professor and permanently enjoined the University from discharging him without prior due process which amounts to de facto tenure. On the issue of de jure tenure, the Court held that the University would have to proceed quickly in order to provide a hearing on the charge before June 14, 1973, at which time he would acquire de jure tenure. Id. The University could still conduct the hearing because they had followed proper procedures to begin with, there was no evidence

of malice or bad faith and the factual basis of the charge (as in Perry, supra 92 S. Ct. at 2698, 2700) was still in question. In the instant case, respondents flagrantly violated their own Policies, there is much evidence of bad faith and the factual basis for the charge against petitioner has already been found by the Court, and it is impeached by respondents' own testimony.

The first year of petitioner's probationary period was the academic year 1969-70. Article VI, Section 2.1b of Board's Policies provides no provision for extension and states that the probationary period "should not exceed seven years". Cook County College Teachers Union v. Byrd, 456 F. 2d 882, 887 (7th Cir., 1972) construes this "should" as "must", and this Court has held that where property rights are involved such terminology is mandatory, not directory. French v. Edwards, 80 U.S. 506. Petitioner contends that his entitlement to tenure pursuant to the Board's Policy Article VI, Section 2.1b is not a separate issue but even if it is to be so regarded it can be "set up or claimed" pursuant to Illinois practice and Section 1257.

Regardless of interpretations of Section 1257, this Court could decide this issue pursuant to 28 U.S.C. Section 2106, whereby this Court can direct that any action be taken to establish justice between the parties. Under the applicable dismissal for cause procedure, which prescribes identical due process procedures for both the "tenured" and the "nontenured" during a contract term, a "tenured" professor would have no more protection from summary dismissal than a "nontenured" one, and, on the facts of this case the classification "tenured" and "nontenured" become constitutionally indistinguishable. Thus, the instant case presents an issue of great public importance wherein the traditional ideal of tenure can be resurrected from the level of mere job description and given some constitutional framework in which to thrive.

In Perry, a nontenured professor who was merely nonrenewed "alleged the existence of rules and understandings" which "may justify his entitlement to continued employment absent 'sufficient cause'." (Perry at 2700). This is precisely what the employment status called "tenure" provides according to the Board, i.e. an entitlement to continued employment absent a prior showing of "cause". Roth, supra, Brief of amici curiae of the Board of Governors of State Colleges and Universities of Illinois (No. 71-162, 1972), p. 4.

Tenure arrived at as in Perry is a different kind of tenure, tenure with something of a constitutional foundation rather than a mere job classification. Because the instant case presents all of the numerous liberty and property interests set down in Perry and Roth and ties them together in one case, the instant case provides a broad standard for constitutional tenure. Petitioner doesn't have to merely "allege" as did the professor in Perry, and Professor Roth could make no showing at all.

There is enough in the record in the instant case to deal with virtually every liberty and property interest ever raised in an academic case (and some which have not yet been presented and tested) in this one case. If the standard set down in Perry is extended to the instant case, tenure can be elevated from its current status of mere job terminology and restored to some semblance of its traditional purpose. A clear indication that tenure has been reduced to a mere job category is provided by counsel for respondents' insistence that this case

is a "labor dispute" and such a view is a long way downhill from Jefferson's vision of the role of academia in a free society. Transcript,1-28-75,p.10.

In Stolberg v. Board of Trustees, 474 F.2d 485 (2nd Cir., 1973), a professor was, again, merely nonrenewed as in Roth and Perry. In Stolberg, the deprivations of constitutional rights were more clear than in Perry, though though still not nearly as broad or numerous as in the instant case. There was also some evidence of bad faith on the part of the administration but, again, not nearly as much as in the instant case. Stolberg ordered reinstatement with "tenure" and "issued a ruling for the future guidance of the defendants." (At 490).

In Roth, Perry, Ortwein and Stolberg, professors or a faculty union were criticizing the administration or the government. The instant case is most unique in that petitioner was criticizing not the administration, but other professors and the professors were, in effect, running the administration. (See above pages 10-11 of this Petition). What sort of "future guidance" is appropriate to this new situation?

This new situation can be seen in part by contrasting the instant case with Pickering v. Board of Education, 391 U.S. 563 (1968). In Pickering, an Illinois teacher, again, criticized the administration and was then nonrenewed on the charge that the criticisms were contrary to the best interests of the school. This Court held that proof of such would include actual disruption of classes. Absent such proof, the only way the administration could reach such a conclusion was for the administrators to equate their own personal interests with the interests of the school. The same conclusion would follow in the instant case but with a dramatic new twist. This is the first case where the actual disruption of classes was perpetrated by those controlling the administration. This suggests not a mere equation of the institution's

interests with the personal interests of the administration but an equation of the institution's purpose with the ideological purpose of those controlling the administration. What sort of "future guidance" is appropriate in such a situation?

The net result was that respondents did indeed promulgate the clearest kind of "stigma" (and used the institution's publicly supported media to serve their purpose) which clearly would have the effect of "foreclosing other employment" in ones "chosen profession" (Roth at 564). They further invoked "regulations to bar the. . .(petitioner) from all other employment in state universities." (Roth at 573). Emphasis added. In fact, respondents invoked nonexistent regulations and then tried to give them an appearance of official propriety. All of the tests of liberty and property rights in academia are contained in this case and no such abuses should be tolerated regardless of the presence of such "rigid technical forms" (Perry at 2699) as job description "tenure" and regardless of whether they be accomplished by nonrenewal or "suspension". What type of "future guidance" is appropriate in this case?

Article VI, Sec. 2.1d of the Board's Policies states: "Failure to give proper notice does not, in itself, justify any claim for permanent tenure." Emphasis added. All reasonable minds must necessarily conclude that whatever is required in addition to "in itself" can be provided by the instant case. Given the unprecedented violations of both liberty and property rights in this case, coupled with Section 2.1d of the Board's Policies, petitioner's "claim for permanent tenure" seems clear.

CONCLUSION.

It is respectfully submitted that certiorari should be granted and, while petitioner

believes that this case has broad public importance and that a full hearing on the merits is in the public interest, petitioner requests summary reversal on all or part of the issues presented because petitioner has now been "suspended" for four and one-half years. Petitioner clearly does not possess "equal bargaining power" (North Georgia at 608) with a state colossus of higher education and, given the fact that petitioner is one individual, has received no support from any group or organization and has extremely limited financial resources, petitioner requests summary reversal. This case is a prime example of what Mr. Justice Blackmun described as the instance of "basic unfairness, imbalance or inequality." North Georgia at 619).

Respectfully submitted,

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PRO SE.

APPENDIX A

IN THE CIRCUIT COURT
FOR THE FIFTH JUDICIAL CIRCUIT OF ILLINOIS
COLES COUNTY, CHARLESTON, ILLINOIS

JAMES E. SALYERS, Plaintiff,	)	
v.	)	No. 74-L-16
BOARD OF GOVERNORS OF STATE COLLEGES AND UNIVERSITIES OF ILLINOIS, GILBERT C. FITE, WOLFGANG SCHLAUCH and MARION L. ZANE, Defendants.	)	

DECISION AND ORDER AS TO MOTIONS FOR SUMMARY JUDGMENT ON COUNTS I AND II OF SECOND AMENDED COMPLAINT

This cause comes for hearing on motions for summary judgments filed by The Board of Governors and by the Plaintiff, said motions applying only to Counts I and II of the Second Amended Complaint. Counts III and IV have been severed because of the separate parties and causes of action.

Plaintiff, James E. Salyers, was an assistant professor of History at Eastern Illinois University under the terms of an offer and acceptance dated July 14, 1972. The 1972-73 school term appointment was his fourth year at the University, and he was on a probationary basis, not under tenure.

The By-Laws and Governing Policies of the Board of Governors became a part of the agreement

between Salyers and the University. While the contract appeared to be for a term beginning September 5, 1972 and ending May 31, 1973, the University was obligated to renew for an additional year unless "notification of nonrewal of appointment" was issued twelve months before the expiration of the appointment. (See Chapter VI, Section 2.1c of the By-Laws and Governing Policies)

A letter from President Fite, dated March 19, 1973, received by Salyers stated, "You are hereby suspended from your teaching and other duties at Eastern Illinois University as of Tuesday, March 20th. The reason for this action is your unprofessional, persistent and open attacks on your colleagues in the History Department." The letter further stated that he would have no further responsibilities at the University, and that he would receive his salary to the end of the contract period, and that he would not be offered a contract for the 1973-74 year. On March 27th President Fite again wrote Mr. Salyers in reference to vacating his office, and in that letter stated, in the last paragraph, "Finally, as you know, all of the university appeal procedures are open to you, as they are to every faculty member."

Count I of the Second Amended Complaint alleges that the President attempted to terminate the contract in an improper manner not providing notice and a hearing prior to the termination. Due process procedure of the United States Constitution and Chapter IV, Section 2.1f of the By-Laws and Governing Policies, it is argued, require the prior notice and hearing. Reinstatement and back salary are requested.

Count II alleges the alleged improper termination and sets forth resulting economic loss, other than loss of salary, seeking damages in the amount of $55,175.00.

Defendant, Board of Governors, contend that termination is within the powers of the President, and that notice and hearing is not a condition precedent of the suspension.

It is suggested that Salyers was merely suspended until the end of the school year and that it was his obligation to request a hearing before the faculty committee on personnel.

Both of the sections from the By-Laws and Governing Policies come under the general heading "Policies of the Board of Governors Pertaining to the Academic Staff."

Section 2.1f provides:

> "Termination for cause of a tenure appointment, or the dismissal for cause of a teacher prior to the expiration of a term appointment, should, if possible, be considered by both a faculty committee and the Board. In all cases where the facts are in dispute, the accused teacher should be informed before the hearing in writing of the charges against him and should have the opportunity to be heard in his own defense by all bodies that pass judgment upon his case. He should be permitted to have with him an adviser of his own choosing who may act as counsel. There should be a full stenographic record of the hearing available to the parties concerned. In the hearing of charges of incompetence the testimony should include that of teachers and other scholars, either from his own or from other institutions. Teachers on probationary or permanent appointment who are dismissed for reasons not involving moral turpitude may, upon

> approval of the Board, receive their salaries for at least a year from the date of notification or dismissal whether or not they are continued in their duties at the institution."

Section 2.2 provides:

> "The involuntary release of faculty members during the term of an appointment, or the involuntary release of faculty members who have served two years or more in a regular appointment at the time of notification but who have not acquired tenure must have, if requested by the faculty member, the consideration of the faculty committee on personnel, and their recommendation shall be reported to the Board."

As the motions for summary judgment make clear, this case does not rest upon the rules controlling the failure to renew a contract. The termination was for cause, effected by an immediate suspension, during the 1972-73 term, but with the provision that there would not be a contract for 1973-74. Pay was to continue to the termination of the 1972-73 term.

The Plaintiff was not given notice of a hearing before President Fite's letter of March 19, 1973. The justification for President Fite's action is not at issue. The authority to act without prior due process is the issue. It appears that there is no fact issue involved on the question of liability. The decision is one of law and must now be decided by the Court.

This matter is now before the Court on one issue, and that issue is whether or not Professor Salyers had to be afforded due process prior to the suspension with ultimate termination set forth in President Fite's letter of March 19th. The arguments for due process by the Plaintiff

are based upon the By-Laws and Governing Policies of the Board of Governors on one part and upon the constitutional right to due process on the second part.

For the constitutional right of due process to come into play, a "property interest" would have to be present. The U.S. Supreme Court has held that faculty positions of college teachers are "property interests" which are subject to procedural due process protection, but certain conditions must be present. In Perry v. Sindermann, 408 U.S. 593, 92 Sup. Ct. 2694, the complaint set forth a de facto tenure, and the Court held that if such a tenure was present, then a property interest existed, and it could not be terminated without due process. Perry v. Sindermann was a case involving the failure to renew a contract, but in that case the professor, while lacking a formal tenure right, set forth an implied tenure right, and also set forth that his employment was terminated because of certain public criticism by him of the policies of the college administration. It was contended that his First Amendment rights to free speech were being infringed. To deprive the property right because of an infringement of the First Amendment would not be possible, and that before such a termination of property rights could be made due process must be offered in the way of a hearing.

In Board of Regents of State Colleges v. Roth, 408 U. S. 564, 92 Sup. Ct. 2701, the Court held that no property interests existed where an assistant professor, without tenure, was not offered a new contract. No reasons for non-renewal had been given, but no right for renewal existed. The Court stated that if the right to "liberty" had been interferred with by the institution, then the Fourteenth Amendment cause would have been stated. In Roth the Court said, "The State, in declining to rehire the respondent, did not make

any charge against him that might seriously damage his standing and associations in his community. It did not base the non-renewal of his contract on a charge, for example, that he had been guilty of dishonesty or immorality. Had it done so, this would be different case, for 'where a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him, notice and an opportunity to be heard are essential'." 408 U.S., at p.574, 92 Sup. Ct., at p. 2707.

In the Salyers case we are not dealing with the failure to renew, we are dealing with a suspension and a termination at the end of the current contract. The reasons set forth in the President's letter might involve a "liberty". The deprivation of Salyers' right to continue teaching during the balance of his contract year and the termination of his right to be offered a contract for the next school year would involve a property right.

In Fuentes v. Shevin, 407 U.S. 67, 92 Sup. Ct. 1983, p. 1998, the Court stated: "due process requires an opportunity for a hearing before a deprivation of property takes effect." Bell v. Burson, 402 U. S. 535, 91 Sup. Ct. 1586, held that a drivers license could not be suspended until there had been a fair hearing before suspension and treated the drivers license as an "important interest" entitled to the protection of due process. The Court, in Fuentes v. Shevin, at page 1999, refers to "extraordinary situations" which justify postponing notice and opportunity for a hearing, but states that these situations "must be truly unusual".

Mitchell v. W. T. Grant Co., 416 U. S. 600, 94 Sup. Ct. 1895, is cited as revising the Fuentes ruling. However, close examination of the case leaves the impression that it is clarification of the earlier decision. In Mitchell,

the Court does point out, "The usual rule has been 'where only property rights are involved, mere postponment of the judicial enquiry is not denial of due process, if the opportunity given for ultimate judicial determination of liability is adequate'." (p. 1902) It must not be forgotten that in the Fuentes case the Court was dealing with property rights as being items in which two parties claimed an interest. Justice Power, in his concurring opinion in Mitchell, assists in clearing the confusion when he says, "The determination of what due process requires in a given context depends on a consideration of both the nature of the governmental function involved and the private interests affected." (p. 1908) Peacock v. Board of Regents of Universities and State Colleges of Arizona, 510 F. 2d 1324, in holding that a post suspension hearing was adequate due process, gives an analysis of the various decisions which set forth the guidelines as to whether or not the hearing must be pre or post. The Court, however, stated, "We emphasize that under different circumstances, involving a more serious intrusion of a protected property right, such as the professorship, or of a 'liberty' interest, or an employment relationship in which loyalty and cooperation are less imperative, a pre-deprivation hearing may be required." (p. 1330)

As appears from the By-Laws and Rules of Procedure, there is a possibility of review. Dr. Fite's letter of March 27th suggested the review procedure. The By-Laws are made available to faculty members. From Dr. Fite's testimony, the review procedure used at the University appears to be post suspension. Salyers did not request a review.

The Court in Mitchell did not bar post hearings "if the opportunity given for ultimate judicial determination of liability is adequate." The interests of both the school and the teachers

must be considered. The property interest of loss of income would not be affected if there could be a hearing prior to the next school year. The suspension, with pay, alleviated this problem. The property interest of right to teach would be affected from the time of the suspension until the review period had been completed. The niceties of procedures in criminal cases would not be necessary, so the review procedure could be handled without delay. The interference with liberty would, based on the charges in Dr. Fite's letter, be limited to "reputation." Salyers' reputation would probably be affected as much by a pre-suspension hearing as a post suspension hearing. As in criminal cases, the mere filing of the complaint would cause injury. An acquittal by prehearing or post hearing would probably have the same overall effect. This Court does not fail to recognize the importance of a teacher being able to remain in the mainstream of academic life.

The interests of the University, or, in fact, any edicational institution, in being able to summarily suspend are evident. The administration is charged with maintaining an institution which has as its function the training of people. The campus and facility are present to perform the function. Order is always a problem. If an influence is present which disrupts the main function of the institution, perhaps the administration should have the right to summarily terminate the influence. To hold that no instructor could be summarily suspended could lead to ridiculous results. It would be putting the "interests" of one employed to perform the function ahead of those for whom the function is created. What if an instructor did not teach? Must those who came to learn suspend their learning while the institution provides a predetermination hearing? Must the administration allow an instructor to continue on the staff, pending a due process

hearing, when he is possibly attacking the good name, reputation, honor or integrity of other instructors in his department? The deterioration of the reputation of those attacked, in the eyes of the students, could have a serious affect on the university, even though it could not be measured.

The sufficiency of the post suspension procedure is not now before the Court. The justification for Dr. Fite's actions is not before us. The issue, as stated before, is whether or not the University was required to state charges, give notice to Salyers, and provide a hearing before suspension. Considering the governmental function and the private interests involved, this Court holds that a prior hearing is not a denial of due process because a subsequent review could give an adequate judicial determination of liability.

For the reasons stated herein, the Defendants' Motion for Summary Judgment is allowed, and judgment is entered for Defendants on Counts I and II of the Plaintiff's Second Amended Complaint. Because the other counts of the complaint have been severed and involve separate issues and parties, this is a final and appealable order.

ENTERED this 13th day of May, 1976.

/s/ Carl A. Lund
Circuit Judge

APPENDIX B

UNITED STATES OF AMERICA

STATE OF ILLINOIS)
) SS.
APPELLATE COURT)
Fourth Judicial District

At an APPELLATE COURT sitting at Springfield, within and for the State of Illinois.

Present: Honorable HAROLD F. TRAPP, Presiding Judge

Honorable JAMES C. CRAVEN, Judge Honorable FREDERICK S. GREEN, Judge

Martin J. Gutschenritter, Sheriff
Attest: Robert L. Conn, Clerk

BE IT REMEMBERED, that to-wit: On the 19th day of November, A.D. 1976, certain proceedings were had in said Court and entered of record in the words and figures following, to wit:

James A. Salyers, Plaintiff-Appellant	)	
vs.	)	Appeal from Circuit Court Coles County 74-L-16
Board of Governors of State Colleges and Universities of Illinois, Gilbert C. Fite, Wolfgang Schlauch, and Marion L. Zane, Defendants-Appellees	)	No. 13926

Motion by appellee to dismiss appeal allowed. Appeal dismissed for failure to comply with

Supreme Court Rules 342-343.

And it is further considered by the Court that the said appellees recover of and from the said appellant costs by them in this behalf expended, and that they have execution therefor.

I, ROBERT L. CONN, Clerk of the said Appellate Court, do hereby certify that the foregoing is a true copy of the final order of the said Appellate Court in the above entitled cause, of record in my office

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said Appellate Court, at Springfield, this 20th day of December in the year of our Lord one thousand nine hundred and seventy-six.

/s/ Robert L. Conn
Clerk of the Appellate Court, Fourth Judicial District of Illinois

APPENDIX C

STATE OF ILLINOIS
OFFICE OF
CLERK OF THE SUPREME COURT
Springfield

Clell L. Woods
Clerk

62706
March 31, 1977

Telephone
Area Code 217
782-2035

Mr. Frederick C. Kubicek
Attorney at Law
417 Seventh Street
Charleston, Illinois 61920

No. 49178 - James E. Salyers, petitioner, vs. Board of Governors of State Colleges and Universities of Illinois, et al., respondents. Leave to appeal, Appellate Court, Fourth District.

You are hereby notified that the Supreme Court today denied the petition for leave to appeal in the above entitled cause.

Very truly yours,
/s/ Clell L. Woods
Clerk of the Supreme Court

APPENDIX D

STATE OF ILLINOIS
OFFICE OF
CLERK OF THE SUPREME COURT
Springfield

Clell L. Woods
Clerk

62706
May 18, 1977

Telephone
Area Code 217
782-2035

Mr. Frederick C. Kubicek
Attorney at Law
417 Seventh Street
Charleston, Ill. 61920

In re: James E. Salyers, petitioner, vs. Board of Governors of State Colleges and Universities of Illinois, et al., respondents
No. 49178

Dear Mr. Kubicek:

The Supreme Court today made the following announcement concerning the above entitled cause:

"The motion by petitioner for reconsideration of the order denying petition for leave to appeal is denied."

The mandate of this Court has today issued to the Clerk of the Appellate Court for the Fourth District.

Very truly yours,

/s/ Clell L. Woods

Clerk of the Supreme Court

CLW:cr
cc-- Dunn, Brady, Geobel,
Ulbrich Morel & Jacob
Mr. James E. Salyers

IN THE

SUPREME COURT OF THE UNITED STATES

No. 77-415

JAMES E. SALYERS,

Petitioner

v.

BOARD OF GOVERNORS OF STATE COLLEGES AND UNIVERSITIES OF ILLINOIS, GILBERT C. FITE, WOLFGANG SCHLAUCH and MARION L. ZANE,

Respondents.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

DUNN, BRADY, GOEBEL, ULBRICH, MOREL & JACOB
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Bloomington, Illinois 61701

JOHN L. MOREL
Of Counsel

SCHNEPP & BARNES PRINTERS, INC., SPRINGFIELD, ILL.

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IN THE

SUPREME COURT OF THE UNITED STATES

No. 77-415

JAMES E. SALYERS,

Petitioner

v.

BOARD OF GOVERNORS OF STATE COLLEGES AND UNIVERSITIES OF ILLINOIS, GILBERT C. FITE, WOLFGANG SCHLAUCH and MARION L. ZANE,

Respondents.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondent respectfully prays that the Petition for a Writ of Certiorari, filed in this cause, be denied.

STATUTORY PROVISIONS AND RULES INVOLVED

It is essential to supplement the provisions cited by Petitioner by making reference to several Illinois Statutes and Illinois Supreme Court Rules.

Illinois Revised Statutes 1975 Chapter 110 section 2 provides:

> "The Supreme Court of this State has power to make rules of pleading, practice and procedure for the circuit, Appellate and Supreme Courts supplementary to but not inconsistant with the provisions of this Act, and to amend the same, for the purpose of making

this Act effective for the convenient administration of justice, and otherwise simplifying judicial procedure, and power to make rules governing pleading, practice and procedure in respect of small claims, including service of process in connection therewith . . . ."

Illinois Revised Statutes 1975 Chapter 110 section 3 provides:

"The Supreme Court may provide by rule for the orderly and expeditious administration and enforcement of this Act and of the rules adopted hereunder, including the striking of pleadings, the dismissal of claims, the entry of defaults, the assessment of costs, the assessment against an offending party of the reasonable expenses, including attorney's fees which any violation causes another party to incur or other actions that may be appropriate."

Illinois Revised Statutes 1975 Chapter 110A, Illinois Supreme Court Rule 342 provides:

(b) Time for filing. No later than 14 days after the due date of the appellee's brief, the appellant shall file the excerpts from record. Extensions or reductions of time may be obtained in the manner prescribed for briefs. See Rule 343(b).

(e) Abstract. The Appellant may elect to file an abstract of the record on appeal in lieu of the excerpts from record, in which event the abstract shall be filed with his brief. . . .

(i) Excusing Excerpts or Abstract. Upon good cause shown after the filing of the record on appeal, the reviewing court or a judge thereof may excuse the filing of excerpts from record or an abstract or the abstracting of matters in the record even though they are to be considered on appeal.

Illinois Revised Statutes 1975 Chapter 110A Illinois Supreme Court Rule 343 provides:

A. Time—"Except as otherwise provided in these Rules . . . , the brief of the appellant shall be filed in the reviewing court within 35 days from the filing of the record on appeal . . . ."

B. Extending or shortening time. The reviewing court or a judge thereof sua sponte or upon the motion of a party supported by an affidavit showing good cause, may extend or shorten the time of any party to file a brief.

QUESTIONS PRESENTED

The questions presented by Petitioner to this Court (Pet. 2, 3) do not accurately reflect the issue which was presented to the Illinois Appellate and Illinois Supreme Court. The due process question was presented to the trial court in and through a motion by the Respondent for summary judgment, which motion was granted. This case and the questions raised therein were resolved upon independent and adequate State procedural grounds.

The only issue presented by the Writ of Certiorari in the instant case is whether the Illinois Appellate Court was warranted in dismissing the Appeal of Petitioner for failure to comply with State procedural requirements and whether the Illinois Supreme Court was warranted in refusing the Petition for leave to appeal.

STATEMENT OF CASE

Petitioner's statement of the case does not recite the question actually considered by the Fourth District Appellate Court of Illinois, and the Supreme Court of Illinois. For this reason, Respondent believes it is essential to restate the case as accurately and briefly as possible.

James Salyers was a non-tenured faculty member at Eastern Illinois University. Eastern Illinois University is governed by the Respondent Board, which is a body corporate and politic. The instant case does not involve non-renewal of a non-tenured faculty member. The instant case involves suspension for cause with pay of a faculty member for the duration of an academic year. A post-suspension hearing process was available to the Petitioner, and although he was aware of it, he did not pursue it. (Petitioner's Appendix A 1-9).

A motion for summary judgment was filed in the Circuit Court (trial court) by the Respondent together with a memorandum of authorities. Petitioner, through his counsel, responded in opposition to Respondent's motion for summary judgment and submitted a memorandum of authorities. Oral argument was had by the respective parties through their counsel on April 29, 1976, after which the Court took this matter under advisement. On May 13, 1976, Respondent's motion for summary judgment was granted and judgment was entered thereon (Pet. Appendix A 1-A-9). Notice of appeal to the Illinois Supreme Court was filed by the Petition on June 9, 1976. This appeal was to the wrong Court, but pursuant to Illinois Supreme Court Rules, such an error is not a waiver of the right to present any issue to the appropriate Court and the instant case

was transferred by the Supreme Court to the Illinois Appellate Court, Fourth District.

The record on appeal was filed in the Fourth District Appellate Court on August 10, 1976. Pursuant to Supreme Court Rules 342 and 343, the brief and abstract of record of the Petitioner was to be filed in the reviewing court within 35 days from the filing of the record on appeal. Extensions of time are granted pursuant to Illinois Supreme Rules upon good cause shown. The filing of excerpts from the record or of an abstract was not excused by the Court in the instant case, although it may have been pursuant to the provisions of *Illinois Revised Statutes* Chapter 110A section 342.

On September 22, 1976, the Fourth District Appellate Court of Illinois entered the following order:

> "Appellant ruled to show cause, on or before October 6, 1976, why appeal should not be dismissed for failure to comply with Rules 342 and 343. Failure to comply with the Rules will result in dismissal of appeal."

On October 4, 1976, attorney for Petitioner filed an affidavit, purporting to explain the reason or to show just cause why the matter should not be dismissed by the Fourth District Appellate Court. Counsel for Petitioner claimed to have filed a motion for extension of time within which to file Petitioner's brief together with a motion to transfer the case to the Illinois Supreme Court on the 17th day of August, 1976. Neither the Court nor the Respondent received a copy of these motions.

On October 8, 1976, the Respondent filed objections and motion to dismiss the appeal. The objections and motion to dismiss the appeal of the Respondent stated that Petitioner failed to show just cause why the appeal should not be dismissed and that no explanation or reason was provided to the Court for the failure to comply with the respective time limitations.

On October 20, 1976, the Fourth District Appellate Court of Illinois entered the following order:

> "Rule on Frederick C. Kubicek, Attorney for Appellant to file a written response to Appellee's motion to dismiss appeal, said written response to be filed in this Court on or before November 1, 1976."

On October 27, 1976, Petitioner filed their response to Respondent's objections and motion to dismiss the appeal. At that time, Petitioner also filed a motion to excuse filing the abstract from record and a motion to extend the time within which to file their brief and argument.

On December 20, 1976, the Fourth District Appellate Court of Illinois dismissed Petitioner's appeal (B-1 and B-2).

On December 21, 1976, the mandate of the Appellate Court was filed in the Circuit Court of Coles County, Illinois.

On January 12, 1977, a Petition for Leave to Appeal to the Illinois Supreme Court was filed with the Clerk of the Supreme Court by the attorney for the Petitioner.

On January 20, 1977, Respondents filed their answer to the Petition for Appeal.

On January 27, 1977, a motion was filed in the Appellate Court by attorney for Petitioner to recall the mandate.

On February 10, 1977, that motion was denied by the Fourth District Illinois Appellate Court.

On February 11, 1977, attorney for the Petitioner filed a motion in the Illinois Supreme Court to recall the mandate of the Appellate Court, which was filed in the Circuit Court on December 21, 1976.

On February 28, 1977, the Illinois Supreme Court ordered recall of the mandate.

On March 31, 1977, the Illinois Supreme Court denied that Petition for Leave to Appeal.

On April 13, 1977, Petition for rehearing was filed in the Supreme Court of Illinois by the Petitioner. The Illinois Civil Practice Act and Illinois Supreme Court Rules do not provide for a rehearing on an order denying a Petition for Leave to Appeal. Accordingly, the Illinois Supreme Court treated this matter as a Petition for Reconsideration.

On May 18, 1977, the Illinois Supreme Court denied the motion of the Petitioner for reconsideration of the order denying the Petition for leave to appeal. The mandate of the Court was filed in the Circuit Court of Coles County on the 20th day of May, 1977.

Although the Petition for Writ of Certiorari is presented by the Petitioner pro se, Petitioner was represented by counsel in the Circuit, Appellate and Supreme Courts of Illinois as well as upon the filing of the Petition for an extension of time within which to file his Petition for the Writ of Certiorari.

ARGUMENT

(REASONS FOR DENYING THE WRIT)

Petitioner's prayer for issuance of a Writ of Certiorari should be denied. This Court does not have jurisdiction of the instant case. The constitutional questions which Petitioner has raised are not before this Court and were not squarely before the Illinois Appellate and Supreme Courts. The Court is not presented with any questions involving any substantive law. It is respectfully submitted that the Illinois procedural requirements for appeal in Illinois were the only matters considered by the Illinois Appellate and Illinois Supreme Courts. These requirements are set forth in the Illinois Supreme Court Rules which are promulgated pursuant to authority granted by statute to the Court by the Illinois General Assembly. Those Rules serve a legitimate state interest. The discretion exercised by the Illinois Appellate Court in dismissing the appeal of Petitioner and by the Illinois Supreme Court in denying Petitioner's request for leave to appeal was not abused. The Appeal of the Petitioner from the decision in Circuit Court of Illinois was dismissed due to the failure of the Petitioner through his counsel to comply with the procedural requirements of the Illinois Supreme Court Rules. The Illinois Courts did not exceed their jurisdiction and they have proceeded according to the essential requirements of Illinois procedural law. A Writ of Certiorari will not lie for review of an exercise of discretion.

Petitioner had his day in Court. At the trial level, depositions were taken and pretrial discovery was complete. There wasn't a genuine issue as to any material fact, and accordingly, the Respondent filed a Motion for Summary Judgment to that effect. The issues were briefed and

argued by all parties. Memoranda of Authority were provided to the Court and oral argument was made in support and in opposition. The Court took this matter under advisement on April 29, 1976 and rendered the decision granting Respondent's motion for summary judgment on May 13, 1976. The Court rendered their decision on independent state grounds and those grounds are supported by a legitimate state interest.

The Fourth District Appellate Court of Illinois entered a rule against the Petitioner to show cause why their appeal should not be dismissed. Ample opportunity was given to counsel for Appellant to state his position and to cite authorities and argument in support thereof. After taking this matter under advisement, the Fourth District Appellate Court dismissed the Appeal.

Time limitations on appeal are to be strictly adhered to by the litigants. Their failure to do so may result in the dismissal of that appeal. The Illinois Appellate Courts have regularly dismissed litigation where the abstract of record or excerpts from the record have not been filed by the Appellant. *First National Bank v. Blair,* 266 Ill. App. 222 (1932). Dismissals have been dealt with summarily. *Moore v. Knutsen Trucking Company, Inc.,* 28 Ill. App. 3d 679 (1975); *Davis v. Davis,* 128 Ill. App. 2d 427 (1970); *Harris v. Annunzio,* 411 Ill. 124 (1952). Dismissal often occurs when the abstract or excerpts are filed but not complete. *Husted v. Thompson-Hayward,* 62 Ill. App. 2d 287 (1965).

The Illinois Appellate Court, First District, in *People v. Thornhill,* 31 Ill. App. 3d 779, 789 (1975) stated:

> ". . . we are . . . serving notice, that in the future, the press of other business may not be sufficient grounds to justify any delays. We repeat the warning of this Court in *Gray v. Gray,* 6 Ill. App. 2d 571, 578 (1955),

> that it is counsel's duty to procure the aid and assistance necessary to alleviate such conditions or to see to it that such business will be handled by less clogged offices. Prompt disposition of litigation is too important to be delayed because a select group of attorneys may be enjoying more business at a given moment than their brethren."

Illinois Courts strongly disapprove of any non-compliance with the rules of procedure which are adopted to expedite the Appellate process, and they will not hesitate to dismiss an appeal where appropriate. *Wenige-Epperson Inc. v. Jet Lite Products, Inc.,* 28 Ill. App. 3d 320 (1975). Failure to file a brief within the necessary time period resulted in a dismissal pro forma in *Smith v. Chicago State University,* 23 Ill. App. 3d 942 (1974). Where a party fails to present a proper record, the Court of Review may, on its own motion, dismiss the appeal. *Libman v. Gipson,* 93 Ill. App. 2d 65 (1968). In fact, the appeal may be dismissed for the Appellant having filed as part of the record on appeal a document that neither qualifies as a report of proceedings or an agreed statement of facts. *Johnston Ford Company v. Lewan,* 71 Ill. App. 2d 420 (1966).

Constitutional questions are not in issue in the instant case. The sole question is whether the state procedural requirements were followed. If they were not, this Honorable Court is deprived of the right to review. *Barr v. City of Columbia,* 378 U.S. 546; 84 Sup. Ct. 1734 (1964). This Court is not to review state court judgments which rest on independent and adequate state grounds in cases involving state's procedural rule matters. *Herb v. Pitcairn,* 324 U.S. 117, 125; 65 Sup. Ct. 459, 4-2 (1955); *Davis v. Wechsler,* 263 U.S. 22; 44 Sup. Ct. 13 (1923). The instant case rests on independent and adequate state grounds and involves state procedural matters. The Illinois rules serves the legitimate state interest and the failure to comply by

Plaintiff's counsel will serve as a bar to federal review of the questions submitted by Petitioner.

The Respondent maintains that the questions presented to this Court are not those stated by the Petitioner. Regardless, the Circuit Court resolved those issues on independent and adequate state procedural grounds.

In *Henry v. State of Mississippi,* 379 U.S. 443, 446 (1965), Mr. Justice Brennan wrote:

> "It is, of course, a familiar principle that this Court will decline to review state court judgments which rest on independent and adequate state grounds, even where these judgments also decide federal question. The principle applies not only in cases involving state substantive grounds, *Murdock v. City of Memphis,* 20 Wall. 590, 22 L. ed. 429, but also in cases involving state procedural grounds."

The reason for the United States Supreme Court's refusal to review petitions where adequate state grounds exist was stated by Mr. Justice Jackson in *Herb v. Pitcairn,* U.S. 118, 125-126 (1945):

> "The reason is so obvious that it has rarely been thought to warrant statement. It is found in the partitioning of power between the state and federal judicial systems and in the limitations of our own jurisdiction . . . . We are not permitted to render an advisory opinion and if the same judgment would be rendered by the state court after we corrected its views of federal laws, our review could amount to nothing more than an advisory opinion."

The test to be applied where a litigant's procedural default might prevent vindication of his alleged federal right is whether "the state's insistence on compliance with its procedural rule serves a legitimate state interest." *Henry v. State of Mississippi,* 379 U.S. 443, 446 (1965).

The Illinois statute on summary judgments and the procedural rules providing for its implementation, as applied in this case, serve legitimate and important state interests. The Illinois Supreme Court delineated those interests when they stated:

> "We have previously held that summary judgment procedure is an important tool in the admission of justice, that its use in a proper case is to be encouraged and that its benefits inure not only to the litigants, in the saving of time and expenses, but to the community in avoiding congestion of trial calendars and the expenses of unnecessary trials. *Allen v. Meyer,* 14 Ill. 2d 284."

The Illinois Statute on summary judgments (*Illinois Revised Statutes* 1969, Chapter 110, section 57), heretofore set forth verbatim, is substantially the same as Federal Rule of Civil Procedure 56 (Fed. Rules Civ. Proc. Rule 56, 28 U.S.C.A.). It provides that upon motion for summary judgment the judgment shall be rendered forthwith if the pleadings, depositions and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

Under Federal Rules of Civil Procedure, just as under the Illinois Civil Practice Act, it is clear that, faced with these circumstances and matters, a Federal Court has granted the Respondent's Motion for Summary Judgment. In *First National Bank of Arizona v. Cities Service Co.,* 391 U.S. 253, 289 (1968), the Court noted that it "is required . . . that sufficient evidence supporting the claimed factual dispute be shown to require a jury or judge to resolve the parties' differing versions of the truth at trial." Petitioner in this case failed to present sufficient evidence.

CONCLUSION

The issues as stated by Petitioner and the questions framed in their Petition for Writ of Certiorari are not before this Honorable Court. The Illinois Appellate and Illinois Supreme Court rendered their decisions upon the failure of the Petitioner to comply with the Rules of the Illinois Supreme Court regarding appeal. Their decisions were on procedural matters and involve their exercise of discretion. The subject this Court does not have jurisdiction in the instant case and is barred from consideration of the questions submitted by the Petitioner.

Even if the questions presented by the Petitioner were properly before this Court, the Petition for Writ of Certiorari should be denied.

The Illinois Circuit Court has decided this case in accordance with well established procedural law, patterned substantially after Federal Rules of Civil Procedure. Illinois law has been applied consistently in the manner that it was applied in this case. *Whitley v. Frazier,* 21 Ill. 2d 292 (1961); *Smith v. Township High School Dist. 158,* 335 Ill. 346 (1929); *Lundahl v. Hansen,* 147 Ill. 504 (1893). It is clear that adequate, independent state grounds exist for the decision in this case and that these grounds are supported by a legitimate state interest. *Allen v. Meyer,* 14 Ill. 2d 284 (195[illegible]).

For the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

DUNN, BRADY, GOEBEL, ULBRICH,
MOREL & JACOB
600 Peoples Bank Bldg.
Bloomington, Illinois 61701

JOHN L. MOREL
Of Counsel

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1977

No. 77-415

JAMES E. SALYERS,

Petitioner

v.

BOARD OF GOVERNORS OF STATE COLLEGES AND UNIVERSITIES OF ILLINOIS, GILBERT C. FITE, WOLFGANG SCHLAUCH and MARION L. ZANE,

Respondents

ON PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT OF ILLINOIS, COLES COUNTY, CHARLESTON, ILLINOIS

PETITIONER'S REPLY MEMORANDUM

Respondents' opposition to your petitioner's Petition in the above entitled cause rests primarily upon your petitioner's alleged failure to comply with Illinois Supreme Court Rules 342 and 343. This issue was dealt with extensively on pages 12-18 of your petitioner's Petition. Respondent has not cited one case in opposition to petitioner's authorities which point

out the conflict between the Circuit Court's decision and the opinions of this Court concerning the relationship of due process and academia (see Appendix A1-9 and pages 18-24 of petitioner's Petition.) And the conflict is a direct conflict.

Respondents sole contention on this point is the unsupported allegation that the state court decided all issues on "adequate state grounds."

Respondents contend (p.5) that petitioner's Notice of Appeal to the Illinois Supreme Court on June 9, 1976, was "to the wrong court" which statement is erroneous as shown in my Petition (p.15). Respondent further states (p.6):

> On October 4, 1976, attorney for petitioner filed an affidavit.... Counsel for petitioner claimed to have filed a Motion for Extension of Time Within Which to File Petitioner's Brief together with a Motion to Transfer the case to the Illinois Supreme Court on the 17th day of August, 1976. Neither the Court nor the respondent received a copy of these motions.

Respondents then state (p.6) that, on October 8, 1976, they filed objections and motions to dismiss the appeal. That motion alleged only that respondent did not receive a copy of petitioner's motion and the Appellate Court's order of dismissal (Petition, B1-2) states that the dismissal is on respondents' motion.

Petitioner's counsel's affidavit of October 4, 1976, which was cited by respondents on page 6 of their reply brief quoted above clearly states that petitioner's counsel had, in fact,

mailed a Motion for Extension of Time to File Brief along with a Motion to Transfer both dated August 17, 1976, though not received by respondents' counsel. (On page 7, respondents state that petitioner filed a Motion for Extnesion of Time to File Brief on October 27, 1976, which is misleading because petitioner's counsel merely renewed his request of August 17, 1976.)

Concerning Rule 342, which is accurately quoted by respondents on page 2, an abstract is not due until such time as the brief is filed and petitioner's counsel's affidavit of October 4, 1976, stated that he had requested an extension of time to file brief on August 17, 1976, and renewed said request by motion of October 27, 1976. Rule 342 is clear in that no abstract is due until a brief is filed and an extension of time to file a brief thereby extends time for filing abstract.

The sole allegation in respondents' Motion to Dismiss of October 8, 1976, upon which the Appellate Court's Dismissal was based, is that respondents' counsel did not receive a copy of the August 17, 1976, Motion to Extend Time to File Brief. Respondents' reply brief cites not a single Illinois authority governing service of motions by mail which refute, overturn or supersede Bernier v. Schaefer, 11 Ill. 2d 525, 529 (1957); People v. Chapman, 392 Ill. 168, 170 (1945) and Kimbrough v. Sullivan, 131 Ill. App. 2d 313 (1971) or other authorities cited on page 13 of my Petition. Respondents' Reply Brief alleges only that respondents did not receive a copy of said Motion and in Chapman the Illinois Supreme Court held that dismissal was not warranted even where appellees alleged that a Motion had not been sent. Chapman held that the fact that an affidavit of service was

on file in the record was sufficient. Respondents experienced some difficulty with service by mail as shown on page 18 of my Petition, but they suffered no penalty. The Illinois Supreme Court decisions in especially Echols v. Olsen, 63 Ill. 2d 270 (1976) and also Michels v. Industrial Commission, 45 Ill. 2d 111 (1970) and City of Chicago v. Joyce, 38 Ill. 2d 368 (1967) as well as the Fourth District Appellate Court decision in Stauffer v. Held, 16 Ill. App. 3d 750 (1974), all of which authorities are evaluated in my Petition on pages 13-14, are of vital importance on this question, but respondents' Reply Brief presents no critical evaluation of these cases and, indeed, cites not one authority in opposition to them. Respondents' Reply Brief (pp.10-11) quotes from only one Illinois authority on the issue of procedural rules violations and that quotation (from People v. Thornhill, 31 Ill. App. 3d 779 (1975)) concerns an attorney's "clogged offices" which is completely irrelevant to the instant case within the context in which it is presented. See page 15 of petitioner's Petition concerning Thornhill's application to instant case.

Respondents assert (p.14); "Illinois law has been applied consistently in the manner that it was applied in this case." (Emphasis added.) This court has stated that state courts must be "reasonably consistent" in the application of local rules of procedure where federal issues are present. Sullivan v. Little Hunting Park, 396 U.S. 229, 244 (1969) and my Petition (p.17). No quotations from cases or analysis thereof are presented by respondents to support their contention. Three authorities are merely cited by respondents and analysis reveals that they are completely irrelevant. Whitley v. Frazier, 21 Ill. 2d 292 (1961) and Smith v. Township High School District, 158, 335 Ill. 346 (1929) deal with the statutory requirement that

political elections must be contested within thirty days and Lundahl v. Hansen, 147 Ill. 504 (1893) involves default of payment on a land sale. Libman v. Gibson, 93 Ill. App. 2d 65 (1968) and Johnston Ford Company v. Lewan, 71 Ill. App. 2d 420 (1966) cited on page 11 are also irrelevant. Given the numerous authorities evaluated in depth by my Petition (pp.13-14), respondents contention is without foundation.

Respondent asserts (p.10) that dismissals "have been dealt with summarily" and "pro forma" (p.11). The authorities cited in support of this contention are Moore v. Knudsen Trucking Company, Inc., 28 Ill. App. 3d 679 (1975); Davis v. Davis, 138 Ill. App. 2d 427 (1970); Harris v. Annunzio, 411 Ill. 124 (1952); Smith v. Chicago State University, 23 Ill. App. 3d 942 (1974). In Davis, the appeal was affirmed in part and reversed and remanded in part. Smith involved a civil service employee who won in the Circuit Court, the university appealed and appellee "had not appeared" and the Appellate Court reversed the judgment. Harris and Moore could not be described as 'summary' dismissals in the sense of the summary dismissal in the instant case because the court published the grounds for the dismissal and specified how the appellant failed to comply. None of which was done in the instant case. In Harris, the Illinois Supreme Court even detailed the established precedents for the action taken. In the instant case there is no precedent for the action taken, and, indeed, all the precedents are to the contrary as shown on pages 13-18 of my Petition. In line with Harris, your petitioner, and not the respondent, has detailed the precedents applicable to Rules 342 and 343 in the instant case. This Court has indicated that even if a state rule itself is not "novel," its application must not be so where petitioner has relied on prior decisions of the state court. Sullivan, supra, at 245-7. Respondent contends

(p.10) that petitioner was given "ample opportunity . . . . to state his position" but this Court has indicated that the state court must be "reasonably consistent" and explain why it has accorded different treatment to the instant case. Sullivan, supra, at 244. On summary dismissal, see especially the last paragraph on page 16 of my Petition.

Respondent presents no reply at all to the important authorities cited on page 16 of my Petition which state that an appeal will not be dismissed where such would result in injustice, where liberty or property rights are at stake, where issues of public importance are presented or where public officials violate public rules or policies.

Respondent contends (p.10) that "Petitioner had his day in Court", but only at "the trial level." Illinois Supreme Court Rule 301 states that every final judgment of a Circuit Court is appealable "as of right." This "right" of even one hearing on appeal of vital federal issues has been denied to petitioner by the summary dismissal on grounds which are contrary to the applicable decisions of Illinois Courts.

Respondent states (p.12): "The test to be applied where a litigant's procedural default might prevent vindication of his alleged federal right is whether 'the state's insistence on compliance with its procedural rule serves a legitimate state interest'. Henry v. State of Mississippi, 379 U.S. 443, 446 (1965)." Having stated this, respondent cites no Illinois authority on this important point. See pages 17-18 of my Petition which shows that no "legitimate state interest" is present on the procedural rules issue in the instant case and, hence, petitioner meets what respondent calls "the test" required for "vindication of his federal right."

Having made the above statement at the bottom of page 12, respondent (on p.13) immediately launches into a consideration of "summary judgments." Summary judgment was rendered by the Circuit Court pursuant to motions for summary judgment filed by both parties (my Petition, pages 11,14), but petitioner fails to see how that ties into respondents' consideration of whether the Appellate Court had a 'legitimate state interest' in dismissing petitioner's appeal in the Appellate Court. Perhaps respondent means to suggest that petitioner was objecting to the Circuit Court's authority to grant summary judgment for respondents as was done by the Circuit Court (Petition at A9). Petitioner's sole opposition to respondents' Motion for Summary Judgment went to the issues of the case and not to whether or not the Circuit Court had the authority to grant summary judgment.

Respondent also implies that the federal issues were only "presented to the trial court in and through a motion by the respondent for summary judgment, which motion was granted," (p.4) and that petitioner then only replied to respondents' Motion for Summary Judgment (p.5). In fact, petitioner raised the federal issues in his Second Amended Complaint as well as his Brief in Opposition to Defendants' Motion for Summary Judgment (my Petition, p.5). The federal issues were also raised by petitioner in Memorandum of Law in support of petitioner's own Motion for Summary Judgment, filed March 31, 1976, pages 5-7.

Further, the Circuit Court's decision (Petition, A1-9), contrary to respondents' claim on page 4 of his response, was based entirely on the federal issues without construction of any local state law. It is misleading for respondents to now claim that they raised the due process

issue in their Motion for Summary Judgment, especially when examination of that document shows that it deals only with construction of the Board's Policies and Fite's letters to petitioner.

Despite respondents' contention that "Constitutional questions are not in issue in the instant case," and that the "sole question" is the procedural rules, respondents Reply Brief does tentatively address the federal issues decided by the Circuit Court. If respondent means simply 'adequate state grounds,' examination of the Circuit Court's decision shows that it was based only on federal due process issues and, even though the decision did involve consideration of the state's "interest," such interest is itself part of the 'balancing' of property interests (A7-9), and is, therefore, an integral part of the federal issue and is not an "independent" state ground.

The Circuit Court did, indeed, conclude that the state's interest outweighed petitioner's interest but only after attempting to balance those interests, pursuant to Mitchell v. W. T. Grant Co., 94 S. Ct. 1895, 1908, which is itself a federal issue. Your petitioner has shown direct conflict between the Circuit Court's conclusions and applicable decisions of this Court. (Petition, pp. 18-24). In their brief opposition, respondents have said nothing in reply to petitioner's showing of direct conflicts and have cited not one authority.

Although respondents assert that the "sole question" is the procedural rules (p.11) and that the due process questions presented by my Petition are not at issue, respondent (pp.4-5) does discuss the merits of the case and the basic due process issues presented in the record. On page 5, respondents assert that the instant case

involves a "suspension for cause." As shown on pages 2-3, 6, A3-4 of my Petition, the Board's Policies contain no suspension procedure. As shown on pages 8-10 of my Petition, respondents have changed their stories several times concerning the procedures which they employed and when the "suspension" went into effect. The last theory cited in my Petition was that set forth by respondents on February 13, 1975, in their Answer to Second Amended Complaint i.e., that petitioner was "suspended and dismissed for cause" without any specification as to dates at all (Petition, p.10). It was on March 22, 1976, that the theory of petitioner's "involuntary release" was introduced (Defendants' Motion for Summary Judgment). The latest theory is now "suspension for cause."

On page 8, respondents' state that petitioner's counsel filed a "Petition for Rehearing" but rules provide only a "Petition for Reconsideration." The precise terminology is somewhat ambiguous. One authority does refer to "petitons for rehearing" in the Illinois Supreme Court. (Illinois Civil Practice After Trial, Section 12.12). Respondents allege that the correct term is "Petition for Reconsideration," but the Clerk of the Illinois Supreme Court calls it a "Motion for Reconsideration" and, hence, respondents are in error. Respondents (p.7) also cite my Petition (B1-2) to the effect that the Appellate Court's Order of Dismissal was on December 20, 1976, when the document clearly states November 19, 1976.

Respondents conclude (p.14): "Even if the questions presented by the petitioner were properly before the court, the Petition for Writ of Certiorari should be denied." But respondents' Brief in Opposition does not present any reason or cite one authority to support this contention concerning the federal due process issues presented by my Petition.

The numerous due process issues presented by the instant case are before this Court because they were decided as the sole basis for the Circuit Court's decision and the Appellate and Illinois Supreme Courts evaded the federal issues on unsubstantial grounds of local procedure. Respondent's Brief in Opposition provides not the slightest refutation of my Petition on any of the many points and issues presented, either the rules issues or the broad due process questions. All of the basic questions are presented by the Circuit Court's decision and petitioner's Petition.

Respectfully submitted,

James E. Salyers, Petitioner

Pro Se.

October 15, 1977